

In the Matter of Merchant Mariner's Document No. Z-961021-D1 and
all other Seaman Documents

Issued to: ERNESTO PRALDO

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1076

ERNESTO PRALDO

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 30 October 1957, an Examiner of the United States Coast Guard at Baltimore, Maryland, suspended Appellant's seaman documents upon finding him guilty of misconduct. Four specifications allege that while serving as assistant pantryman on board the United States SS AFRICAN MOON under authority of the document above described, Appellant failed to perform his duties on 21 and 22 August 1957; he was absent from duty without permission on 25 August 1957; Appellant failed to join his vessel on 26 August 1957; and, thereafter, he was absent from the vessel from 26 through 29 August 1957.

At the hearing, Appellant elected to act as his own counsel. He entered a plea of guilty to the charge and each specification. No evidence was introduced by either party. The Examiner concluded that the charge and four specifications had been proved by plea. An order was entered suspending all documents, issued to Appellant, for a period of eight months. This order included putting into effect a prior probationary suspension of six months.

The decision was served on 9 July 1958. Appeal was timely filed on 25 July 1958.

FINDINGS OF FACT

On a foreign voyage including the dates of 21 to 31 August 1957, Appellant was serving as assistant pantryman on board the United States SS AFRICAN MOON and acting under authority of his Merchant Mariner's Document No. Z-961021-D1.

On 21 and 22 August 1957, Appellant failed to perform his duties while the ship was in a foreign port.

On 25 August 1957, Appellant was absent from duty without

permission during the regular working hours.

On 26 August 1957, Appellant failed to join the ship upon her departure from a South African port. Appellant remained absent until he rejoined the vessel at a different port in South Africa on 30 August 1957.

Appellant has a prior disciplinary record of offenses found proved at four hearings commencing in 1946. Most of the offenses were either failure to join or failure to perform his duties. The last of these hearings was in April 1957 when Appellant's documents were suspended for two months outright with an additional suspension of six months on twelve months' probation for failing to perform duties, failure to join and absence from his duties on the ship.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that since he rejoined the ship on 30 August, he should not have been found guilty of both failure to join on 26 August and absence from the vessel on 26 to 29 August. Appellant further claims that the order is too severe.

OPINION

Appellant contends that he should not have been found guilty of both the offenses of failure to join his ship on 26 August (Third Specification) and absence from the ship on 26 through 29 August (Fourth Specification).

The finding of guilty as to the Fourth Specification is hereby set aside and the specification is dismissed. Unauthorized absence is a necessarily included lesser offense of the offense of failure to join. No other element is necessary to prove the Fourth Specification since the duration of such absence is simply an aggravating circumstance. On the other hand, the offense of failure to join encompasses the additional element of absence at the particular time when the ship departs from a port. Hence the two specifications constitute multiplicitious charges arising out of the same set of facts. Proof of the Third Specification necessarily includes proof of the Fourth Specification. The same conclusion has been reached in court-martial cases in analogous situations where a man is charged with both unauthorized absence and missing the movement of his ship. See United States v. Posnick (1957), 8 USMA 201, 24 CMR 11.

Although the Fourth Specification should not have been considered as a separate offense by the Examiner in arriving at the

length of suspension to impose in his order, it is my opinion that the order of eight months' suspension is not excessive under the circumstances. The Examiner acted properly in effectuating the probationary six months' suspension since Appellant violated the twelve months' period of probation which had been imposed at an earlier hearing. In addition to this, Appellant received only a two months' outright suspension. Considering Appellant's failure to perform his duties on three other days during this voyage (as alleged in the first two specifications) and his prior record of similar offenses, the total order of eight months' outright suspension is not too severe and it will be sustained.

Another reason for disposing of the Fourth Specification is that it does not allege Appellant's absence to have been unauthorized, wrongful, without permission, overleave, without authority, or any similar wording.

ORDER

The order of the Examiner dated at Baltimore, Maryland, on 30 October 1957, is AFFIRMED

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 22nd day October, 1958